SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 711

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, ET AL., PETITIONERS,

vs.

COUNTY OF LOS ANGELES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

INDEX

	Original	Print
Record from the Superior Court of the State of California in and for the County of Los Angeles	1	1
Clerk's transcript	1	1
Amended complaint for injunction	1	1
Exhibit "A"—Loyalty check	24	16
Demurrer to amended complaint	27	25
Order sustaining demurrer	40	34
Judgment of dismissal	41	34
Memorandum ruling	43	35
Notice of entry of judgment	57	43
Notice of appeal	60	45
Stipulation as to record	62	45
Clerk's certificates (omitted in printing)	64	
Proceedings in District Court of Appeal, Second Appellate District	392	47
Opinion	392	47
Proceedings in Supreme Court of California	432	64
Excerpts from petition for hearing	432	64
Stipulation as to record	596	75
Clerk's certificate (omitted in printing)	596	
Order denying petition for hearing	599	76
Stipulation as to record	600	77
Order allowing certiorari	603	78

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534228

Clerk's Transcript

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, Cornelius Webster, William G. Cole, J. L. Martin, Robert L. McGuire, Julleana Glisby, Alice M. Parsons, Caroline Pottenger, John R. McCroskey, Mattie A. Belino, Ada Gruver, Major West, Alice Walsh, C. H. Demarest, Betty S. Selden, Miriam Lasarou, Ralph L. Davis, Winifred McConnell, Columbus S. Bell, Shirley Galat, Ruth Thomasen, Kent Hammond Thies, Lawrence Lucks, individually and in a representative capacity for and on behalf of 20,000 employees of Los Angeles County similarly situated, Plaintiffs,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County; Wayne Allen, as Chief Administrative Officer of said County; Harold W. Kennedy as County Counsel of said County; Charles C. Mack, G. H. Newland and T. J. O'Keefe, and each of them, as members of the Civil Service Commission of said County; Clifford Amsden, as Secretary and Chief Examiner of said Commission; Michael Donoghue, as Registrar of Voters of said County; I Doe, II Doe, III Doe, IV Doe and V Doe, Defendants

AMENDED COMPLAINT FOR INJUNCTION—Filed February 2, 1948

I

(a) Each of the plaintiffs named in this paragraph is a member of the United Public Workers of America, C. I. O., Local 246; said Local 246 is a voluntary unincorporated association and labor union representing approximately

fifteen hundred employees of Los Angeles County. Each of [fol. 2] said employees is a citizen of the United States, a resident of the County of Los Angeles, State of California, and is now an employee of the County of Los Angeles in the classified civil service thereof, with permanent status; set forth below, opposite the name of each plaintiff, is the approximate date on which his employment with the County of Los Angeles began, and the position he now holds:

Helen Parker, 1943, Admission Worker.
Ione Lane Wheeler, 1945, Medical Social Case Worker.
Katherine Gates, 1937, Case Work Director.
Cornelius Webster, 1947, Administrative Assistant.
William G. Cole, 1924, Intermediate Attendant.
J. L. Martin, 1928, Attendant.
Robert L. McGuire, 1930, Attendant.
Julleana Glisby, 1939, Janitress.
Alice M. Parsons, 1941, Medical Social Worker.
Caroline Pottenger, 1946, Occupational Therapist.
John R. McCroskey, 1942, Attendant.
Mattie A. Belino, 1943, Attendant, Intermediate.
Ada H. Gruver, 1946, Nurse.
Major West, 1944, Laundry-Washer Man.

(b) Each of the plaintiffs named in this paragraph is a member of the American Federation of State, County and Municipal Workers, Local 558, A.F.L.; said Local 558 is a voluntary unincorporated association and labor union rep- [fol. 3] resenting approximately one thousand employees of Los Angeles County. Each of said employees is a citizen of the United States, a resident of the County of Los Angeles, State of California, and is now an employee of the County of Los Angeles in the classified civil service thereof, with permanent status; set forth below, opposite the name of each plaintiff, is the approximate date on which his employment with the County of Los Angeles began, and the position he now holds:

Alice Walsh, 1929, Supervising Case Worker.
C. H. Demarest, 1931, Supervising Case Worker.
Betty S. Selden, 1934, Case Reader.
Miriam Lasarou, 1945, Intermediate Social Case Worker.
Ralph L. Davis, 1945, Social Worker.
Winifred McConnell, 1946, Social Case Worker.
Columbus S. Bell, 1946, Social Case Worker.

Shireley Galat, 1945, Social Case Worker.
Ruth Thomasen, 1946, Social Case Worker.
Kent Hammond Thies, 1946, Case Work Training Supervisor.
Lawrence Lucks, 1944, Deputy Probation Officer.

(c) The plaintiffs named in paragraphs (a) and (b) above bring this action in their own behalf as individuals, and in a representative capacity on behalf of approximately 20,000 other employees of the County of Los Angeles similarly situated. Said other employees are similarly situated, [fol. 4] in that they are, and each of them is, employed by said County under and by virtue of the same provisions of the Charter of the County of Los Angeles, (hereinafter called Charter), and the same Rules of the Los Angeles County Civil Service Commission (hereinafter called Rules), and subject to the same provisions of said Charter and Rules respecting examination, selection, appointment, tenure, promotion, demotion, transfer, discipline, discharge, suspension, classification and rating of efficiency, and are now, or are about to be, subjected to the same "Loyalty Check" hereinafter alleged. The question herein is one of common and general interest to all said 20,000 employees of said County, and said employees are numerous, and it is impractical to bring them all before this Court.

II

(a) Defendant County of Los Angeles, (her-inafter called County) is a political subdivision of the State of California charged with governmental powers, including the power to sue and be sued.

(b) Defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, are members of and each of them is a member of, the Board of Supervisors of the County, elected respectively, from the first, second, third, fourth, and fifth supervisor districts of said County. Defendant, Raymond V. Darby is Chairman of said Board of Supervisors.

[fol. 5] (c) Defendant, Wayne Allen, is Chief Administrative Officer of the County.

(d) Defendant, Harold W. Kennedy, is the County Counsel of the County.

(e) Defendant, Eugene W. Biscailuz, is the Sheriff of the County.

(f) Defendants, Charles C. Mack, G. H. Newland and T. J. O'Keefe, are members of, and each of them is a member of, the Civil Service Commission of the County.

(g) Defendant, Clifford N. Amsden, is Secretary and Chief Examiner of said Civil Service Commission.

(h) Defendant, Michael Donoghue, is the Registrar of Voters of the County.

(i) Each of the defendants named in subdivisions (b) through (h) above, is a resident of the County and engaged in the performance of the duties of their respective offices alleged above, in the City of Los Angeles in the County.

(j) Defendants Allen, Kennedy, Biscailuz and Amsden have been constituted by defendants members of the Board of Supervisors, and continuously since August 26, 1947 have been and now are, members of a Committee ordered and directed to meet, coordinate, supervise and effectuate the Loyalty Check hereinafter alleged. Said defendants will hereinafter be collectively referred to as the Committee.

[fol. 6]

III

Plaintiffs are ignorant of the true names of the defendants sued herein by the fictitious names of I Doe, II Doe, III Doe, IV Doe and V Doe, and hereby ask leave of Court to amend their complaint by inserting the true names of such defendants in the place and stead of such fictitious names, when such true names shall have been ascertained.

IV

On or about April 1, 1947, the Board of Supervisors of the County, comprised of the members alleged in paragraph II (b) hereof, directed that defendants Wayne Allen and Harold W. Kennedy study, prepare and recommend ways and means in which an investigation could be made into the political beliefs and affiliations of all employees of the County, in order to determine whether or not there are any members of the Communist Party of the United States, avowed or otherwise, or any persons who are "communis-

tic" or "subversive" in the employ of the County, its agencies and districts.

V

Under and by virtue of said direction of said Board of Supervisors, defendants, Wayne Allen and Harold W. Kennedy, did on or about August 15, 1947, submit to said Board of Supervisors their recommendations that there be conducted among the employees of the County a "Loyalty Check."

[fol. 7] A true and correct copy of said recommendations is attached hereto, marked Exhibit "A," and by this reference made a part hereof as fully as if set forth herein at length, and is hereinafter called the "Loyalty Check."

VI

On or about August 26, 1947, said defendants members of the Board of Supervisors did accept and adopt said "Loyalty Check" and did order and direct that said "Loyalty Check" be put into operation and effectuated.

VII

Defendants members of the Committee are now engaged in the coordination, supervision and effectuation of the "Loyalty Check" and have threatened and do now threaten, and will, unless restrained by this Court, cause plaintiffs and all employees similarly situated to be discharged or otherwise penalized in their employment unless they execute the oath and affidavit prescribed and required by paragraph numbered 5 of said "Loyalty Check."

VIII

In the coordination, supervision and effectuation of the "Loyalty Check," defendants members of the Committee have threatened to, intend to, and will, presume that employees of Los Angeles County, (including plaintiffs and all employees similarly situated) who have ever belonged to or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affi-

[fol. 8] davit, are subversive, and will

(a) Publicly report such employees to the defendants members of the Board of Supervisors as subversive and disloyal, and

(b) Call upon such employees to carry the burden of proving to said defendants that they are not subversive and disloyal, and

(c) Reduce, remove or otherwise discriminate against such employees for failure so to prove.

IX

In the coordination, supervision and effectuation of the "Loyalty Check," defendants members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Inquire into the political beliefs of plaintiffs and all employees similarly situated;

(2) Inquire into the political and community organizations and associations of plaintiffs and all employees similarly situated;

(3) Require that plaintiffs and all employees similarly situated reveal and disclose their political beliefs and opinions, the political and other organizations to which they now belong or have ever since December 7, 1941 belonged, or which they have "directly or indirectly supported or followed";

(4) Require that plaintiffs and all employees similarly [fol. 9] situated reveal and disclose the newspapers, books, magazines or other publications which they have since December 7, 1941, directly or indirectly supported or followed, or do now so support or follow;

(5) Require that plaintiffs and all employees similarly situated renounce and forego political opinions, beliefs, associations, organizations, newspapers, books, magazines or other publications considered or deemed by said defendants to be "communistic" or "subversive" or otherwise unorthodox in the discretion of the said defendants;

(6) Define in their arbitrary and uncontrolled discretion, those thoughts, beliefs and opinions, those political organizations and associations, and those newspapers, books magazines or other publications which shall be orthodox and unorthodox for plaintiffs and all employees similarly situated.

X

In the coordination, supervision and effectuation of the "Loyalty Check," defendants members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Publicly report to the defendants members of the Board of Supervisors as subversive and disloyal, plaintiffs and all employees similarly situated, or some of them, on account of (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plain-[fol. 10] tiffs or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any newspaper, book, magazine or other publication listed in the oath and affidavit constituting part of said "Loyalty Check."

(2) Subject to a penalty which may include discharge, plaintiffs and all other employees similarly situated, or any of them, on account of, (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plaintiffs or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any newspaper, book, magazine or other publication listed in [fol. 11] the oath and affidavit constituting part of said "Loyalty Check."

(3) Interfere with the rights of plaintiffs or any employees similarly situated if they so elect to join any political party, including the Communist Party, whether or not deemed orthodox or unorthodox by defendants members

of the Committee, or support or follow some or all of the principles, tenets or beliefs of any such party.

XI

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in connection therewith are without authority and unlawful in that said "Loyalty Check" and said acts of defendants discriminate against plaintiffs and all employees similarly situated because of their political opinions or affiliations contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

XII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful for the reason that they deny to plaintiffs and to all employees similarly situated due process of law in violation of the First and Fourteenth Amendments to the Constitution of the United States in that:

[fol. 12] (a) They require plaintiffs and all employees similarly situated to disclose their political opinions and associations;

(b) They abridge for plaintiffs and all employees similarly situated freedom of speech, freedom of opinion, freedom of belief, freedom of association, freedom of the press and the opportunity for free political discussion and association;

(c) They prescribe or threaten to prescribe that which is orthodox in political belief and association for plaintiffs and all employees similarly situated.

XIII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law contrary to the First

and Fourteenth Amendments to the Constitution of the United States and Article I, Section 9 thereof in that they subject said plaintiffs and said employees to penalties which may include discharge by reason of opinions, speech, associations, newpapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read, prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J. [fol. 13] Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and is thereby an ex post facto law and a bill of attainder.

XIV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they are an ex post facto law contrary to and in violation of Article I, Section 16 of the Constitution of the State of California in that they subject plaintiffs and all employees similarly situated to penalties which may include discharge by reason of opinions, speech, associations, newspapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and it is thereby an ex post facto law and bill of attainder.

XV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the [fol. 14] Board of Supervisors of the County of Los Angeles in connection therewith, and the acts of the defendants, Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz, and Clifford Amsden, are without authority and unlawful because they deny plaintiffs and all employees similarly situated of due process of law contrary to the Fourteenth

Amendment to the Constitution of the United States and Article I, Section 9 thereof, and Articles I, Section 16 and Article VI, Section 1 of the Constitution of the State of California in that they constitute a finding of fact and determination that the Communist party, Communism and Communists are illegal and subversive, that they advocate the overthrow of the government by force and violence, the authority of which to make such finding and determination is reserved solely to the courts, and said finding and determination are by virtue thereof violative of the division of governmental powers prescribed in the Constitution of the United States and of the State of California and are a bill of attainder.

XVI

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are unlawful and without authority because they deprive plaintiffs and all employees similarly situated of the equal protection of the laws in violation of the [fol. 15] Fourteenth Amendment to the Constitution of the United States in that they deny to said plaintiffs and said employees equal opportunity for employment and establish conditions of employment not applicable to employees generally and is a wholly arbitrary, unreasonable and discriminatory classification of employees based upon their exercise of their constitutional rights to freedom of political and other thought, opinion, belief, conscience, speech, press, association and of organization based upon a wholly unascertainable, indefinite, vague, ambiguous and uncertain standard of classification.

XVII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law contrary to the Fourteenth Amendment to the Constitution of the United States in that they discriminate against said plaintiffs and said employees and assess penalties against them without prescribing any ascertainable standard therefor.

XVIII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz and Clifford Amsden, in connection therewith, as alleged in [fol. 16] paragraph VIII above, are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law and equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States in that they establish a presumption that any county employee who has ever belonged to or directly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive and said presumption has no rational or other relationship between the fact of an employee's membership in or having directly or indirectly supported or followed any such organization and the fact that he is now subversive, and further in that the creation of such presumption gives the employee so affected no reasonable or other opportunity to submit the facts in his defense.

XIX

Plaintiffs and all employees similarly situated have no plain, adequate or speedy remedy at law, and by this action a multiplicity of suits on behalf of some 20,000 employees of the County of Los Angeles seeking protection from the void and unlawful acts and threatened acts of the defendants will be obviated.

XX

By reason of the "Loyalty Check" and the unlawful acts and threatened acts of the defendants as alleged herein, plaintiffs and all employees similarly situated have suf- [fol. 17] fered and will suffer irreparable damage which can not be compensated by monetary damages assessed by a court of law, in that they will be subjected to an unlawful and unconstitutional inquiry into their political opinions and affiliations; they will be required to disclose to defendants their opinions and affiliations under pain of a penalty which may include discharge; they will be publicly stigmatized as subversive and disloyal by reason of their political opinions and beliefs.

As and for a second, separate count and cause of action, plaintiffs allege:

I

Reallege as fully as if set forth herein at length, all of the allegations of their first cause of action in this complaint.

II

There is an actual controversy between plaintiffs and the employees similarly situated on whose behalf this action is brought, and the defendants, in the following respects:

(1) Whether the oath and affidavit required by defendants to be executed as hereinabove alleged, deprives plaintiffs and all employees similarly situated of their constitutional rights and privileges, as hereinabove set forth.

(2) Whether the presumption applied by defendants, [fol. 18] that County employees who have ever been members of or directly or indirectly supported or followed any of the organizations listed in said oath and affidavit, are subversive and disloyal, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(3) Whether the threat by defendants publicly to report as disloyal and subversive all County employees who have ever belonged to or directly or indirectly supported or followed any of the organizations listed in said oath and affidavit, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(4) Whether the imposition of the burden of proof that they are not subversive or disloyal upon such County employees who have ever belonged to or directly or indirectly supported or followed any of said organizations, as hereinabove alleged, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(5) Whether the threatened action of defendants to discharge or otherwise penalize any County employee who fails to carry such burden of proof, as aforesaid, violates

the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(6) Whether the threatened action of defendants in in- [fol. 19] quiring into the political opinions and affiliations, newspapers, books and other publications of all County employees, or which they have supported or followed, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated as hereinabove set forth.

(7) Whether the threatened action of defendants in requiring that County employees reveal and disclose their political opinions and affiliations, newspapers, books and other publications, or which they have supported or followed, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(8) Whether the threatened action of defendants in defining in their arbitrary and uncontrolled discretion those political opinions and affiliations, and those newspapers, books, magazines or other publications which shall be orthodox or unorthodox, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(9) Whether the "Loyalty Check" is void on its face and as authoritatively construed for the reason that it is contrary to and in violation of the provisions of the Constitutions of the United States and the State of California as hereinabove alleged.

(10) Whether the "Loyalty Check" and the acts and threatened acts of defendants in connection therewith are [fol. 20] contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

(11) Whether under the provisions of the Charter including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California as hereinabove alleged, plaintiffs and all employees similarly situated may

be required to execute said oath and affidavit as a condition of continued employment.

(12) Whether under the provisions of the Charter, including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California as hereinabove alleged, defendants, or any of them, may impose upon plaintiffs or any employees similarly situated, any penalty or discrimination for failure or refusal to execute said oath and affidavit.

(13) Whether by reason of the provisions of the Charter, including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitu- [fol. 21] tions of the United States and the State of California as hereinabove alleged, any order or requirement by defendants, or by any officer or agent of Los Angeles County acting under their direction or supervision, that plaintiffs or any employees similarly situated execute said oath and affidavit is a lawful order or requirement as to plaintiffs and any employees similarly situated.

(14) Whether by reason of the provisions of the Charter, including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California as hereinabove alleged, plaintiffs and all employees similarly situated may fail or refuse to execute said oath and affidavit without being discharged, discriminated against or otherwise penalized on account of said failure or refusal or because said failure or refusal constitutes disobedience of a lawful order of a superior.

Wherefore, plaintiffs pray:

1. For a preliminary and final injunction restraining and prohibiting defendants, and each of them, their agents, employees, successors, from,

(a) Requiring, directly or indirecty, or by any means whatsoever plaintiffs or any employee similarly situated, [fol. 22] to execute the oath and affidavit prescribed in paragraph numbered 5 of the "Loyalty Check".

(b) Discriminating with respect to hire, tenure, or any term or condition of employment, or in any way, directly or indirectly, against plaintiffs or any employee similarly situated, for refusal or failure to execute said oath and affidavit.

(c) Creating, establishing or applying, directly or indirectly, or by any means whatsoever, any presumption or inference that plaintiffs, or any employee similarly situated, are subversive, from the fact that they have at any time belonged to or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(d) Requiring any plaintiff or any employee similarly situated to prove that he is not subversive and imposing on any such employee any burden of proof because of or on account of having at any time belonged to or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(e) Requiring, directly or indirectly, or by any means whatsoever, that plaintiffs, or any employee similarly situated, reveal or disclose or otherwise make known to defendants their political opinions or affiliations, or the political utterances they have made or the writings or publications they have written, participated in or read.

(f) Inquiring in any way, directly or indirectly, through check of political registrations, files of agencies of the [fol. 23] County or any other government, the oath and affidavit prescribed in the "Loyalty Check," or by any means whatsoever, into the political opinions, affiliations, utterances, publications of plaintiffs or any employee similarly situated.

(g) Reporting publicly as subversives or disloyal, plaintiffs or any employee similarly situated, for or on account of failure or refusal to execute the aforesaid oath and affidavit, or any political opinion, affiliation, speech, utterance, publication of said plaintiffs or said employees.

2. For a judgment declaring that defendants may not do or require to be done the things sought to be enjoined as

prayed above, for the reason that the doing or requiring to be done of these things violates the provisions of the Charter of the County of Los Angeles and the Constitutions of the United States and of the State of California, in the respects alleged in the complaint.

3. For such other and further relief as to this Court may seem meet and just.

4. For costs of suit herein.

Gallagher, Margolis, McTernan & Tyre, by John T. McTernan, Attorneys for Plaintiffs.

[fol. 24] EXHIBIT "A" TO AMENDED COMPLAINT

EXHIBIT "A"

OFFICE OF THE COUNTY COUNSEL

1100 Hall of Records, Los Angeles

August 15, 1947.

HONORABLE BOARD OF SUPERVISORS, Fifth Floor, Hall of Records, Los Angeles 12, Calif.

Gentlemen:

Subject: LOYALTY CHECK

On April 1, 1947, the Board of Supervisors directed that the Chief Administrative Officer and the County Counsel study, prepare and recommend ways and means in which a proper investigation can be made to determine whether or not there are any Communists, avowed or otherwise, that may be employed by the County of Los Angeles, its agencies and districts.

As the result of a preliminary investigation directed towards the ascertaining of reasonable and justified procedure which will accomplish the desire of your Honorable Board, the following is recommended:

1. The County Auditor will prepare in triplicate an alphabetical list of the names of the approximately 20,000 persons on his payroll cards. Mr. J. M. Lowery, the County Auditor, has cooperated fully in this matter and agreed to furnish such lists.

2. Present one of these lists to Michael Donoghue, the Registrar of Voters, with the request that he check this list against the names of any persons who have registered as Communists at any time during the past ten years. Mr. Donoghue has heartily agreed to make this check.

3. Request the Federal Bureau of Investigation to check this list against the subversive file of the Federal Bureau of Investigation.

[fol. 24a] 4. Require all officers and employees coming under the jurisdiction of the Board of Supervisors to execute an oath of the type and character attached hereto.

5. Require such officers and employees to execute an affidavit setting forth every name that such person has ever been known by, and setting forth further that he has never at any time been a member of, or supported or contributed to, an organization advocating the over-throw of our form of government, and further declaring in such affidavit that he has never at any time been a member of, or supported or contributed to, any organization listed in the affidavit, which organizations have been mentioned in one or more of the reports of the Joint Fact Finding Committees of 1943, 1945 and 1947, on un-American Activities in California, filed and accepted by the California Legislature on the following dates: (1943) April 9, 1943, 55 Session, Senate Journal, page 1145; (1945) June 14, 1945, 56th Session, Senate Journal, page 3856; (1947) March 24, 1946, 57th Session, Assembly Journal, page 20.

With reference to the treatment which has been given to the several reports of the Joint Fact Finding Committee, appointed by the California Legislature, we wish to make it clear that the mentioning of the name of an organization in these reports does not necessarily mean and is not intended to convey the implication that they are subversive or Communistic or have ever been engaged in any subversive or Communistic activities.

Part of the technique of subversively inclined Communists is to secretly infiltrate organizations with the purpose of eventually achieving some subversive purpose. In the meantime, rank and file members often are enrolled wholly innocent of subversive possibilities but attracted to the or-

ganization by its publicly alleged purposes which have every appearance of being patriotic and worthy.

A careful reading of the Tenney reports will disclose that [fol. 24b] there are instances in the reports where organizations are named, but it was not claimed by the Fact Finding Committee that such organizations were in themselves subversive, but that subversive or Communistic organizations were endeavoring to place such organizations under their influence. We believe, however, that in ferreting our Communism, it is a practical approach to start with the organizations which are known to exist for the purpose of overthrowing our government, or are known to be subversive or Commu-stic, and then give careful consideration to such other organizations as the reports of the Joint Fact-Finding Committee of the California Legislature indicates might have come under some subversive or Communistic influence.

By way of summary, it is to be emphasized that the organizations set forth in the list, which is part of the affidavit, that by their designation there it is not intended to infer that they are necessarily subversive or Communistic, as of course, we have no facilities for knowing their true character. For this reason each employee by indicating that he is or was a member, should understand that he will be given ample opportunity to indicate that the organization was not subversive or communistically inclined or that he personally was not an advocate of subversive or Communistic doctrines.

6. Appoint a committee consisting of the Chief Administrative Officer, the Sheriff, the Secretary of the Civil Service Commission, and the County Counsel, to meet, coordinate, and supervise the loyalty check program, and keeping its information confidential at all times, except when reports are made as outlined in paragraph 8.

7. Channel all information and reports to this committee, which shall keep all information confidential. Authorize the committee to use the facilities of the Sheriff's office for the purpose of seeking additional information relative to specific cases.

[fol. 24c] 8. Require the committee to report periodically to the Board of Supervisors if any known subversively inclined persons are located with a recommendation by the

committee in connection with each particular person in question.

Very truly yours, Wayne Allen, Chief Administrative Officer. Harold W. Kennedy, County Counsel.

[fol. 25] OATH AND AFFIDAVIT

Department .....

A. OATH OF OFFICE OR EMPLOYMENT

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence, except those specified as follows: ..... and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles by force or violence.

C. AFFIDAVIT RE ALIASES

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

[fol. 25a] D. MEMBERSHIP IN ORGANIZATIONS

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

NAME	VOLUME	PAGE
Abraham Lincoln Brigade	43	140
Academic and Civil Rights Council of California	43	97
	47	103
After School Clubs	43	300
Agitprop	43	35
American Artists Congress	47	82
America for Americans	43	280
American Comm. for a Free Indonesia	47	56
American Comm. for Democracy and Intellectual Freedom	47	202
American Comm. for Protection of the Foreign Born	47	452
		202
		219
American Comm. to Save Refugees	47	45
Americans Communications Assn.	43	141
	47	72
		163
		210
American Communist Party	43	116
American Council on Soviet Relations	47	202
American Federation for Political Unity	43	96
American Friends of the Chinese People	47	45
American Guard	43	259
American League Against War and Fascism	43	93
American League for Peace and Democracy	43	135
	47	202

[fol. 25b]

American League of Christian Women	43	259
American Peace Mobilization	43	96
American Russian Institute	47	88
		103
American Society for Technical Aid for Spain	47	313
American Student Union	43	115
American Veterans Comm.	47	230

NAME	VOLUME	PAGE
American Writers Congress	45	122
American Youth Congress	43	98
American Writers School	47	70
American Youth for Democracy	47	21
Anti-Axis Comm.	43	345
Anti-Hearst Examiner	43	119
Anti-Nazi League	43	42
Anti-Nazie League of Hollywood	43	96
Anti-ROTC Committee	43	98
Arcos Limited	43	98
Artist Front to Win the War	47	191
Arts Advisory Council	47	94
Authors League	47	286
Ballila	43	301
Bay Area Council Against Discrimination	47	209
California Conference for Democratic Action	47	170
California Labor School	47	47
California Youth Legislature	43	96
	47	209
Centro Anti-Communists	43	201
China Aid Council of American League for Peace and Democracy	47	313
Citizens Committee for Better Education	47	56
Citizens Comm. for Defense of Mexican-American Youth	43	216

[fol. 25c]

Citizens Comm. to Free Earl Browder	47	213
Citizens Comm. to Support Labors Right	47	187
Citizens No Foreign Wars Coalition	43	251
Civil Rights Congress	47	55
Civil Rights Council for Northern California	47	209
Comintern	43	39
Comm. for Boycott Against Japanese Aggression	47	202
Comm. for Defense of Mexican-American Youth	47	97
Comm. for Support of S. W. Garson	47	210
Comm. Protesting Attacks Against the Abraham Lincoln Brigade	47	210
Comm. to Defend America by Keeping Out of War	47	202

NAME	VOLUME	PAGE
Communist International	43	93
Communist Party's Little Theatre	47	73
Communist Workers School	47	67
Communist Political Assn.	47	8
Conference for Democratic Action	47	247
Consumers National Federation	47	210
Contemporary Theatre	43	130
Co-ordinating Commission to Lift Embargo (To Spain)	47	202
		210
Council for Pan American Democracy	47	210
Cultural and Professional Projects Assn.	43	149
Congress of Mexican and Spanish-Mexican Peoples of U. S.	47	210
Daily Worker	43	98
Democratic Youth Federation	43	161
Elizabeth Curley Flynn Club	47	35
Elizalde Anti-Discrimination Comm.	47	55
Emergency Comm. to Aid Spain	47	202
[fol. 25d]		
Emergency Trade Union Conference to Aid Spanish Democracy	47	202
Ex Combattanti Society	43	287
Farmer Labor Party	43	98
Federation of Architects, Engineers, Chemists and Technicians	43	135
	47	89
Field Workers School	43	87
First Congress of Mexican and Spanish-American Peoples of U. S.	47	45
Friends of Soviet Russia	47	313
Friends of Soviet Union	43	119
	47	313
Ge[illegible] American Bund	43	383
Greater New York Emergency Conference on Inalienable Rights	47	210
Harry Bridges Defense Comm.	47	202
Hold the Price Line Comm.	47	55
Hollywood Anti Nazi League	43	136
	47	70
Hollywood Cultural Commission	43	148

NAME	VOLUME	PAGE
Hollywood Community Radio Group	47	179
Hollywood Independent Citizens Comm. of Arts, Sciences and Professions	47	33
Hollywood League for Democratic Action	47	33
Hollywood Theatre Alliance	43	91
Hollywood Writers Mobilization	47	34
Humanist Society of Friends	43	119
Independent Citizens Comm. of Arts, Sciences and Professions	47	227

[fol. 25e]

International Labor Defense	43	98
	47	189
International Red Aid	47	214
International Workers Order	47	94
Jewish Peoples Committee	47	45
John Reed Clubs	47	68
Joint Committee for Trade Union Rights	47	202
Joint Anti-Fascists Refugee Committee	47	45
League Against War and Fascism	47	70
League for Democratic Action	47	70
League for Peace and Democracy	43	91
League for American Writers	43	149
League for Struggle for Negro Rights	47	115
League of Women Shoppers	43	125
	47	309
League to Save America First	43	258
Los Angeles County Political Commission	43	159
Los Angeles County Trade Union Commission	43	162
Mooney Defense Commission	43	91
Marine Cooks and Stewards Union		
Maritime Federation of the Pacific		
Mobilization for Democracy	47	45
Motion Picture Cooperative Buyers Guild	43	108
Motion Picture Democratic Committee	43	95
		161
	47	170
National Citizens Political Action Committee	47	236
National Committee to Abolish the Poll Tax	47	45

NAME	VOLUME	PAGE
National Council on Soviet American Friendship	47	219
National Emergency Conference	47	210
[fol. 25f]		
National Federation for Constitutional Liberties	47	219
National Negro Women's Council	47	45
National Negro Congress	43	185
	47	163
National Students League	43	99
New Masses	43	98
New Theatre League	43	138
North American Commission to Aid Spanish Democracy	43	140
	47	190
Pen and Hammer Club	43	91
Peoples Council of America	43	91
Peoples Front	43	100
Progressive Comm. to Rebuild the American Labor Party	47	210
Refugee Scholarship and Peace Comm.	47	202
Second Annual California Model Legislature	43	91
Simon J. Lubin Society	43	86
	47	255
Social Problems Club	43	99
Spanish Relief Committee	43	91
Student Rights Assn.	43	99
United Farmers League	43	37
United Federal Workers	47	218
Western Workers	48	70
	47	36
Workers Alliance	43	135
	47	70
World Committee Against War	43	93
Workers School	47	70
Young Communist League	43	63
	47	21

[fol. 25g]

NAME	VOLUME	PAGE
The Young Pioneers	43	66

——, ——.

Subscribed and sworn to before me this — day of ——, 1947. J. P. Moroney, County Clerk, by —— ——, Deputy.

[fol. 26] [File endorsement omitted.]

[fol. 27] In Superior Court of Los Angeles County

Demurrer to Plaintiff's Amended Complaint—Filed February 10, 1948

Come now the defendants in the above entitled action and demur, both generally and specially, to plaintiffs' amended complaint on the following grounds, to wit:

I

Plaintiffs' first cause of action does not state facts sufficient to constitute a cause of action.

II

That the first cause of action, and more particularly paragraph VII thereof is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats therein, or any of the actions alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats are or will be that of the Loyalty Check Committee itself acting in its official capacity.

(2) Said paragraph VII is uncertain in that it does not appear therein what the factual basis is for the conclusion that threats have been or will be made, or that plaintiff will be caused to be discharged or otherwise penalized.

(3) Said paragraph VII is uncertain because it does not [fol. 28] appear therefrom whether the acts or threats com-

plained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

III

The first cause of action, and particularly paragraph VIII thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph VIII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that defendants "will presume that employees . . . who have ever belonged to, or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affidavit are subversive . . .", and will then take the action described in paragraphs (a), (b) and (c) of said paragraph VIII.

(3) Paragraph VIII and particularly subparagraph (b) thereof, is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that employees will be called upon to carry the burden of proving to said [fol. 29] defendants that they are not subversive and disloyal.

(4) Paragraph VIII, and particularly subparagraph (c) thereof, is uncertain in that it does not appear from said paragraph what factual basis exists for the conclusion that the defendants will reduce, remove or otherwise discriminate against employees for failure to prove that they are not subversive and disloyal.

(5) Said paragraph VIII is uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee, as described by the order of the Board of Supervisors, dated August 26, 1947.

IV

The first cause of action, and particularly paragraph IX thereof, is uncertain in the following facts, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the acts alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph IX is uncertain as it does not appear [fol. 30] therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2), (3), (4), (5) and (6) of paragraph IX of plaintiffs' complaint.

(3) Said paragraph IX, and the whole thereof, is further uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

V

The first cause of action, and particularly paragraph X thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself acting in its official capacity.

(2) Paragraph X is uncertain as it does not appear therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2) and (3) of said paragraph.

(3) Said paragraph X is further uncertain because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of [fol. 31] the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

VI

Plaintiffs' first cause of action, and particularly paragraph XI thereof, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom whether the "acts of defendants" referred to therein is a reference to acts of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them.

(2) Paragraph XI is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion that defendants will discriminate against plaintiffs and all employees similarly situated because of their political opinions or affiliations.

(3) Paragraph XI is further uncertain as it is impossible to determine from the conclusions of the plaintiff whether said acts threatened or otherwise alleged generally in paragraph XI are within or without the scope of the authority of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

VII

Paragraph XII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause [fol. 32] of action are uncertain.

VIII

Paragraph XIII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause of action are uncertain.

IX

Paragraph XIV is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause of action are uncertain.

X

Plaintiffs' first cause of action, and particularly paragraph XV thereof, is uncertain as it cannot be ascertained therefrom what acts by the defendants are without authority and unlawful.

XI

That paragraph XVI is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause of action are uncertain.

XII

That plaintiffs' first cause of action, and particularly paragraph XVII thereof, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom whether the "acts of the defendants" referred to therein is a reference to the acts of the Board of Supervisors or members of the Loyalty Check Committee, or of all of them, or any num-
[fol. 33] ber of them.

(2) Said paragraph is uncertain for the reason that it cannot be determined therefrom what acts of the defendants will discriminate against plaintiffs.

(3) Paragraph XVII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that the acts of the defendants will result in a discrimination against the plaintiffs.

(4) Paragraph XVII is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that the defendants will assess penalties against plaintiffs without ascribing any ascertainable standard therefor.

(5) Paragraph XVII is further uncertain in that it is impossible to determine from the conclusions of the plaintiffs whether said acts threatened or otherwise alleged generally in said paragraph will be within or without the scope of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

XIII

Plaintiffs' first cause of action, and particularly paragraph XVIII, is uncertain in that it does not appear therefrom or from paragraph VIII what the factual basis is for the conclusion that the acts of defendants, Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz, and Clifford

N. Amsden establish a presumption that "any County em-
[fol. 34] ployee who has ever belonged to or directly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive".

XIV

That plaintiffs' first cause of action, and particularly paragraph XX, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom what specific acts and threatened acts of the defendants will result in irreparable damage to plaintiffs.

(2) It cannot be determined therefrom whether the plaintiffs are referring to acts of the Board of Supervisors, or members of the Loyalty Check Committee, or all of them, or any of them.

(3) Said paragraph XX is further uncertain as it is impossible to determine from the conclusions of the plaintiffs whether said acts threatened or otherwise alleged generally in paragraph XX are within or without the scope of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

(4) Paragraph XX is uncertain as it does not appear therefrom what the factual basis is for the conclusion that plaintiffs will be publicly stigmatized as subversive and disloyal by reason of political opinions and beliefs.

(5) Paragraph XX is uncertain as it does not appear
[fol. 35] therefrom what the factual basis is for the conclusion that plaintiffs will be required to disclose to defendants their opinions and affiliations under pain of penalty which may include discharge.

XV

Plaintiffs' first cause of action in its entirety is uncertain in that plaintiffs allege they will be presumed subversive and disloyal, will be stigmatized as subversive and disloyal, and will be discharged, discriminated against and assessed penalties, and must renounce and forego their political beliefs and opinions, but nowhere in said complaint do plaintiffs allege that they have directly or indirectly supported or been members of any of the organizations listed in

the loyalty check order as pleaded by reference in plaintiffs' amended complaint, nor do they allege that they have ever or now do advocate the overthrow of government by force or violence.

XVI

That the first cause of action is ambiguous for the same reasons that it is uncertain.

XVII

That the first cause of action is unintelligible for the same reasons that it is uncertain.

Second Cause of Action

Come now defendants and demur both generally and specially to plaintiffs' second cause of action on the follow-
[fol. 36] ing grounds, to wit:

I

That plaintiffs' second cause of action fails to state facts sufficient to constitute a cause of action.

II

That plaintiffs' second cause of action, and particularly paragraph I thereof, is uncertain as the same incorporates paragraphs VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XX of plaintiffs' first cause of action as a part thereof and that said paragraphs incorporated are uncertain for all of the reasons as stated in defendants' demurrer to plaintiffs' first cause of action.

III

Plaintiffs' second cause of action, and particularly paragraph II thereof, is uncertain for the following reasons, to wit:

(1) Paragraph II, and particularly sub-paragraphs (2), (3), (4), (5), (6), (7), and (8) are uncertain for the reason that apart from the conclusions of plaintiffs, it cannot be ascertained therefrom what the factual basis is for any of the generalizations therein contained with reference to threatened action by defendants and by virtue of which a controversy is alleged to exist.

(2) Paragraph II, and particularly sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are [fol. 37] uncertain in that it cannot be determined therefrom whether the allegation "defendants" referred to therein is a reference to acts of the members of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them, and further whether said "defendants" are acting as individuals or in their official capacity.

(3) Paragraph II, and particularly sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are uncertain in that it is impossible to ascertain if any of the defendants are members of the Loyalty Check Committee meeting and acting as the Loyalty Check Committee, whether their acts are within or without the scope and authority of the Loyalty Check order by the Board of Supervisors dated August 26, 1947.

(4) Sub-paragraph (11) of paragraph II is uncertain for the reason that it cannot be ascertained therefrom what the factual basis is for the conclusion that execution of the oath and affidavit is "a condition of continued employment."

(5) Sub-paragraph 12 of paragraph II is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion of plaintiffs that defendants may impose upon plaintiffs any penalty or discrimination for failure or refusal to execute said *said* oath and affidavit.

[fol. 38] (6) Sub-paragraph 14 of paragraph II is uncertain in that it cannot be ascertained therefrom whether plaintiffs intend to and will hereafter fail and refuse to execute the said oath and affidavit.

IV

Plaintiffs' second cause of action is uncertain in that they allege that a controversy between plaintiffs and defendants exists but they do not allege any facts with respect to direct or indirect support or membership in any of the organizations listed in the Loyalty Check order as pleaded by reference in plaintiffs' amended complaint, nor do they allege that they have ever or now do advocate the overthrow of government by force and violence.

V

That plaintiffs' second cause of action is ambiguous for the same reasons that it is uncertain.

VI

That plaintiffs' second cause of action is unintelligible for the same reasons that it is uncertain.

Wherefore, defendants pray that the demurrer be sustained without leave to amend; that plaintiffs take nothing by this action; that the same be dismissed; that defendants have judgment against plaintiffs for defendants' costs incurred herein, and for such other and further relief as to [fol. 39] the Court may seem meet and proper in the circumstances.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorney- for the Defendants.

We, Harold W. Kennedy, County Counsel, Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, attorneys for the above-named defendants, do hereby certify that the above demurrer to plaintiffs' complaint is not interposed for the purpose of delay and that in our opinion the issues therein raised are well taken in law.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorneys for the Defendants.

[File endorsement omitted.]

[fol. 40] IN SUPERIOR COURT OF LOS ANGELES COUNTY

ORDER SUSTAINING DEMURRER

March 5, 1948 Department 34

(Entered March 12, 1948)

Honorable Clarence M. Hanson, Judge, Presiding.

534228

(Minute Order)

Demurrer to amended complaint having been heretofore submitted is sustained without leave to amend. The restraining order is discharged.

[fol. 41] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 534,228

HELEN PARKER, et al., Plaintiffs,

vs.

COUNTY OF LOS ANGELES, et al., Defendants

JUDGMENT OF DISMISSAL

In this action the defendants County of Los Angeles, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County, Wayne Allen, as Chief Administrative Officer of said County, Harold W. Kennedy, as County Counsel of said County, Eugene W. Biscailuz, as sheriff of said County, Charles C. Mack, G. H. Newlan and T. J. O'Keefe, and each of them as members of the Civil Service Commission of said County, Clifford Amsden, as Secretary and Chief Examiner of said Commission and Michael Donoghue, as Registrar of Voters of said County, having demurred to plaintiffs' amended complaint, the Court being duly advised in the premises and the Court having sustained the demurrer without leave to amend by an order duly made,

Now, therefore, by virtue of the law in the premises aforesaid, it is

Ordered, adjudged and decreed that the above entitle-[fol. 42] action be and the same is hereby dismissed, and that the defendants have and recover from the plaintiffs herein their costs and disbursements incurred in this action, in the sum of $11.40.

Dated this 8 day of March, 1948.

Clarence M. Hanson, Judge of the Superior Court.

(Endorsed.) Filed Mar. 8, 1948. Earl Lippold, County Clerk. By J. E. Shaw, Deputy.

Entered Mar. 9, 1948, Book 1894, Page 205. By C. F. Escapite, Deputy.

[fol. 43] In Superior Court of Los Angeles County

Memorandum Ruling—March 5, 1948

The primary question presented, viewed in its broadest aspect, is whether the Board of Supervisors may require the officers and employees under its jurisdiction (1) to take an oath of allegiance to the federal and state constitutions, and the laws of California as against all enemies of the United States and the State, and (2) require such officers and employees to answer upon their oath certain questions that touch upon the oath.

The plaintiff in cause No. 534177 is a civil service employee of the County of Los Angeles. She alleges in her amended complaint that she is *not* a member of the Communist Party or of any of the organizations listed on the questionnaire submitted to her. She avers, however, that the requirement thereby sought to be imposed upon her, i.e., that she take the oath in the form tendered and respond under oath to the questionnaire submitted, violates her constitutional rights as an American citizen.

The fifteen plaintiffs in cause No. 534288 allege in their amended complaint that they are civil service employees of the County of Los Angeles. They likewise aver that the requirement sought to be imposed upon them, i.e., that they take the oath in the form tendered and respond under oath [fol. 44] to the questionnaire submitted, violates their constitutional rights as American citizens.

The form of the oath here in question, a part of the questionnaire, reads as follows:

"A. . . . I, —— ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So help me God."

The other portions of the questionnaire, except for the organizations listed thereon, read as follows:

"B. Affidavit Re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: .....
and that during such time as I am an officer or employee [fol. 45] of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit Re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

D. Membership in Organizations

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

* * * * * * *

—— ——.

Subscribed and sworn" etc.

Before proceeding further it should be stated that when the demurrers to the original complaints in these causes came on for hearing before Judge Swain, he not only sustained the demurrers and denied a preliminary injunction but he expressed his views in a written opinion as well. In that opinion he stated the oath was entirely proper and the questionnaire likewise. The amended complaints now submitted to me to which demurrers have been filed allege [fol. 46] certain new matters and, moreover, some new and additional authorities are now submitted which were not given to Judge Swain. Accordingly, it seems proper and advisable to submit my own views upon the two cases before me.

Without narrating in detail the allegations of the two amended complaints it will suffice to say that they allege, in almost every conceivable way, that the defendant board and its agents are without power to impose the requirements in question; that the manner, method and application of the power, if power there be, is without legal sanction and violative of the statutory and constitutional rights of the plaintiffs and all employees of the defendant county required to submit to the questionnaire and take the oath in question.

In this State it is well established that the Board of Supervisors under our Constitution, the state laws and the Charter of the County, exercise the powers of the county, except as it is otherwise specifically limited. The Board is vested with the power to appoint all county officers and employees, not otherwise provided for by the Charter. However, with respect to the classified service, the appointments must be made from the so-called eligible civil service list.

The Civil Service provisions of the Charter authorize the Civil Service Commission to prescribe, amend and enforce rules for the classified service, to make investigations con- [fol. 47] cerning the enforcement and effect of its rules, and the efficiency of the service. Moreover, the commission is empowered to reject candidates who wish to be placed upon civil service rolls where they fail to measure to up the reasonable requirements of the commission and likewise it is authorized to drop persons who have attained the eligible list, for like reasons.

In case the appointing power wishes to discharge a civil

service employee the reasons therefor must be given and, thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, despite anything the appointing power can do about it.

From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is "subversive", the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.

What then are the powers of the Board and its agents with respect to laying a *good or bad* foundation for a discharge of an employee? Clearly, the appointing power—[fol. 48] whether it be private or public—is entitled, subject to a review by the Commission, to discharge for cause or no cause, and, as a corollary, to investigate as it sees fit as a basis for such cause, save and except as it is restricted by law.

Section 41 of the Charter provides that "no person in the classified service . . . shall be appointed, or reduced or removed or in any way favored or discriminated against because of his political or religious opinions or affiliations". Aside from this restriction there are no restrictions by the Charter or by law on the appointing power of the board or its agents in appointing or discharging civil service employees, except as noted.

It seems self-evident, then, that aside from any restraining constitutional provision, the Board of Supervisors itself or through its agents duly authorized may investigate to its heart's content the character, the antecedents, the viewpoints and the affiliations of any of its employees, including those in the civil service, so long as the investigation does not touch upon the political or religious opinions or affiliations of the employee. Moreover, it would seem to follow that so long as the Board does not impinge upon these restrictions, it may, like any private employer, demand of its employee an oath, if it chooses, and a response to a questionnaire as a basis in whole or in part for his discharge. The fact that a person is on the civil service rolls does not

[fol. 49] insulate him from the lawful actions of the appointing power or enable him to restrict them, except for the rights specifically granted to him by the provisions of the Charter. Like any private employer the county may question its employees *and demand* unquestioned loyalty, *in the manner it lays it down*, except as restricted by law. To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. (United Public Workers v. Mitchell, 1947, 91 L. Ed. 509.)

There remains then to consider whether the action, or the alleged threatened action, of the Board or its agents, violates the rights of the plaintiffs under the federal or the state constitutions. The plaintiffs contend that their rights in this respect are violated in view of the provisions of the First and Fourteenth Amendments of the federal Constitution and the cognate provisions of our state constitution.

Shortly stated, the plaintiffs contend that the action of the Board and its agents in requiring the employees to take the oath propounded and to give answer to the questionnaire, under oath, violates an employee's rights guaranteed to him under the federal and the state constitutions. These rights, as set forth by the plaintiffs, are as follows:

[fol. 50] (1) "Every citizen may freely speak . . . his sentiments on all subjects, being responsible for the abuse of that right. . . ." (California Constitution, Article I, Section 9.)

(2) "The people shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances." (Calif. Const., Art. I, Sec. 10.)

(3) "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (14th Amendment, U. S. Constitution.)

In viewing the constitutional mantle thrown around an individual it is important to remember that the mantle is

a *safeguard*, not *absolute*, but *relative* and *qualified*. Our federal and state constitutional provisions, which guarantee freedom of speech and of opinion, freedom of the press, freedom of assembly, are not licenses to do completely as one chooses, without regard to the other fellow, who possesses exactly the same liberties. When one purports to pursue the liberties granted by the constitution, he needs to remember that the other fellow has equal liberties and, [fol. 51] what is more, he has the liberty to refuse to listen to another's speech or opinion and the right to refuse to yield to him his own right of assembly. Conceivably, a person may be of the opinion that it is entirely proper to drive through a stop light, or on city streets at 80 miles an hour in violation of an ordinance, but even so, setting up constitutional provisions as a defense will prove ill-advised. So, too, one may believe that the 14th Amendment is a defense to acts that sabotage the Government or are subversive to it, but one will quickly find that the constitutional provision against treason is not cut down or modified, in the least, by the First Amendment or any other provision of the federal or state constitutions.

In what manner, then, do the requirements as laid down by the Board, or as applied by its agents, impinge on the constitutional rights of the plaintiffs or any other officer or employee subject to the general jurisdiction of the Board? Some of the plaintiffs, but not all of them, do say that they have no objection to an oath that would require them to support the constitution, federal and state, but that the oath in question goes further and, consequently, violates their constitutional rights. The oath, it is true, calls upon the employee not only to support the constitution, state and federal, but to abjure enemies of the Government, both domestic and foreign, but even if that be true, as it is, what [fol. 52] is wrong with that in these United States? Moreover, where is the constitutional provision which directly or indirectly prohibits the Board from demanding that an employee subscribe to the oath? The answer is, there is none, and therefore no more need be said on that subject.

We come next to the questionnaire. It requires that the employee, aside from taking the oath submitted, answer under oath (1) whether or not he advocates the overthrow of the Government and whether or not, since December 1, 1941, he has been a member of any political party or organization that advocates the overthrow of the Government by

force or violence; (2) the name or names which he has used or been known by; (3) whether or not he has been a member of or directly or indirectly supported any of the organizations listed on the questionnaire.

With respect to these particular questions in the questionnaire, the plaintiffs contend they violate their constitutional rights, in that, whether they do or do not personally advocate the overthrow of the Government by force or violence, or belong or do not belong to organizations with such objectives, the provisions of the two constitutions sustain them in their refusal to answer. This is the crux of the argument of the plaintiffs in this aspect of the case. Accordingly, we may now proceed at once to a determination of the issue thus made.

A year ago the Supreme Court of the United States an- [fol. 53] swered these identical contentions in the case of United Public Workers v. Mitchell, 91 L. Ed. 509. Accordingly, we may now well turn to that decision for the light it throws on the very similar problem which is posed in the case before us. In that case, *problem which is posed in the case before us. In that case,* instituted by civil service employees, as is the case here, it was contended that the so-called federal Hatch Act, in prohibiting federal classified civil service employees from taking "any active part in political management or in political campaigns", violated their constitutional rights in that it prohibited them from doing the very thing which an ordinary citizen could do with impunity. Accordingly, in that case as here, the plaintiffs sought declaratory relief and an injunction. In holding that the Act was constitutional, the court pointed out that as early as 1882 the court had held that it was entirely proper for Congress to prohibit party activity by federal employees in the classified service. The court said: "The conviction that an actively partisan governmental personnel threatens good administration has deepened since Ex Parte Curtis (106 U. S. 371 (1882)) . . . Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection. . . . To declare that the present supposed evils [fol. 54] of political activity are beyond the power of Congress to redress would leave the Nation impotent to deal

with what many sincere men believe is a material threat to the democratic system.

". . . The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power. . . .

"When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that those restrictions are unconstitutional."

As far back as in 1891 the Mayor of New Bedford, Massachusetts, discharged a policeman for engaging in political activities contrary to an ordinance or rule of the city. The policeman thereupon sued to regain his job on the theory that the ordinance or rule violated his constitutional rights to express his political opinions. In reply to the contention the late Justice Holmes writing the opinion for the court in McAuliffe v. New Bedford, 155 Mass. 216, said:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a [fol. 55] policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the emplied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control. . . ."

In Chrystal v. Police Commission, 33 Cal. App. 2d 564, it is said:

> "There is nothing startling in the conception that a public servant's right to retain in his office or employment should depend on his willingness to forego his constitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment."

In view of the decisions just quoted and especially that of the Supreme Court of the United States, it seems clear that the acts of the defendant Board and its agents, whether they go to the extent claimed by the plaintiffs or not, are within the scope of the power of the Board and are in no sense unconstitutional. Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, [fol. 56] if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. As no cause of action is stated by the complaints in either case, the demurrers thereto are sustained without leave to amend and the restraining orders heretofore issued are discharged.

Dated: March 5, 1948.

Clarence M. Hanson, Judge of the Superior Court.

[File endorsement omitted.]

[fol. 57] IN SUPERIOR COURT OF LOS ANGELES COUNTY

NOTICE OF ENTRY OF JUDGMENT—March 10, 1948

To the plaintiffs and to their attorneys, Messrs. Gallagher, Margolis, McTernan & Tyre, Kenny & Cohn, and Charles J. Katz:

You, and each of you, will please take notice that judgment of dismissal as to all defendants in the above entitled action was entered by the Clerk of the Superior Court on the 9th day of March, 1948, in Book 1894, at Page 205 of Judgments.

Dated this 9th day of March, 1948.

Harold W. Kennedy, County Counsel, by Gerald G. Kelly, Deputy County Counsel, by Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

[Title of Court and Cause]

No. 534228

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Elsa Ruth Randall, being first duly sworn, deposes and [fol. 58] says:

That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that her business address is 1100 Hall of Records, City of Los Angeles, County of Los Angeles, State of California;

That on the 10th day of March, 1949, she served the attached Notice of Entry of Judgment upon the attorneys for the plaintiffs by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at Los Angeles, California, addressed as follows: Gallagher, Margolis, McTernan & Tyre, Kenny & Cohen, and Charles J. Katz, Board of Trade Building, 111 W. 7th St., Los Angeles, California, and that the person on whom said service was made have their office at a place where there is a delivery service by mail, and that there is a regular comunication by mail between the place of mailing and the place so addressed.

Elsa Ruth Randall.

Subscribed and sworn to before me this 10th day of March, 1948. Earl Lippold, County Clerk, by Marie E. McPherson, Deputy.

[fol. 59] [File endorsement omitted.]

[fol. 60] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

NOTICE OF APPEAL—Filed March 24, 1948

To the Clerk of the above entitled Court, and to the Defendants, County of Los Angeles; William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County; Wayne Allen, as Chief Administrative Officer of said County; Harold W. Kennedy, as County Counsel of said County; Charles C. Mack, G. H. Newland and T. J. O'Keefe, and each of them, as members of the Civil Service Commission of said County; Clifford Amsden, as Secretary and Chief Examiner of said Commission; and Michael Donoghue, as Registrar of Voters of said County; and Messrs. Harold W. Kennedy, G. Kelly and Robert L. Trapp, their Attorneys:

You, and each of you, will please take notice that the plaintiffs in this action, and each of them, do hereby appeal to the Supreme Court of the State of California from that certain judgment entered by the above entitled Court on [fol. 61] March 9, 1948, dismissing the above entitled action, which judgment is based upon the order of said Court, dated March 5, 1948, sustaining defendants' demurrer to plaintiffs' amended complaint, without leave to amend.

Dated this 24th day of March, 1948.

Gallagher, Margolis, McTernan & Tyre, by John T. McTernan, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 62] IN SUPERIOR COURT OF LOS ANGELES COUNTY

STIPULATION RE DESIGNATION OF RECORD ON APPEAL AND NOTICE TO CLERK TO PREPARE RECORD ON APPEAL—Filed March 24, 1948

Plaintiffs having filed their notice of appeal from the judgment of the Court dismissing the above-entitled action,

It is hereby stipulated by and between the plaintiffs in the above-entitled action, through their attorneys of record,

and the defendants in said action, through their attorneys of record, that the documents hereinafter set forth shall be the record on said appeal, and the Clerk of the above-entitled court is requested to make up and prepare the following documents only and certify the same as said record on appeal, in accordance with the provisions of Section 953a of the Code of Civil Procedure and Section 5(b) of the Rules On Appeal adopted by the Judicial Council, to the Supreme Court of the State of California:

1. The Amended Complaint;
2. The Demurrer to the Amended Complaint;
3. The Memorandum of Ruling on said Demurrer, dated March 5, 1948;
4. The Order of the Superior Court sustaining said Demurrer without leave to amend;
5. The Judgment of the Superior Court, entered March [fol. 63] 9, 1948;
6. The Notice of Entry of said Judgment;
7. Plaintiffs' Notice of Appeal from said Judgment;
8. This Stipulation.

Dated: This 24th day of March, 1948.

Gallagher, Margolis, McTerman & Tyre, by John T. McTernan, Attorneys for Plaintiffs. Harold W. Kennedy, Gerald G. Kelly, Robert L. Trapp, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants.

[File endorsement omitted.]

[fols. 64-66] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 67-391] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 392] [File endorsement omitted].

IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT

JULIA LEARNED STEINER, Plaintiff and Appellant,

vs.

RAYMOND V. DARBY, et al., Defendants and Respondents

HELEN PARKER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

OPINION—Filed November 12, 1948

Appeal from the Superior Court of Los Angeles County, Clarence M. Hanson, Judge

A. L. Wirin, Fred Okrand; for Appellant Steiner.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents Raymond V. Darby, et al.

Gallagher, Margolis, McTernan & Tyre, John T. Mc-[fol. 393] Ternan, William B. Murrish; Kenny & Cohn, Robert W. Kenny; Charles J. Katz, for Appellants Parker, et al.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents County of Los Angeles, et al.

By stipulation of the parties the above entitled cases involving the same point are submitted for decision on a single set of briefs and since the identical point is involved in each case they will be treated as the same case for the purposes of this opinion.

Conceded Facts

On August 26, 1947, the Board of Supervisors of the County of Los Angeles adopted a resolution requiring each officer and employee under its jurisdiction to execute an oath and affidavit reading as follows:

"Oath and Affidavit

Department ——

A. Oath of Office or Employment

I, —— ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, [fol. 394] against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. Affidavit Re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: —— and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit Re Aliases

I do further swear (or affirm) that I have never used [fol. 395] or been known by any names other than those listed as follows: —— ——."

Also included in the document is paragraph "D" requiring such officers and employees to indicate whether they have ever been a member of or supported any of some 142 named organizations.

September 3, 1947, plaintiffs, who are employees of the County of Los Angeles, filed complaints seeking an injunction to prevent defendants from requiring them to execute an affidavit as set forth above.

March 5, 1948, the Honorable Clarence M. Hanson, trial judge, sustained demurrers to plaintiffs' amended complaints without leave to amend, and on March 9, 1948, judgments of dismissal of the actions were entered. From these judgments plaintiffs appeal. There are also purported appeals from the orders sustaining defendants' demurrers to plaintiffs' complaints as amended.

Question

May the Board of Supervisors of the County of Los Angeles proceed with a fact-finding program under which the officers and employees within its jurisdiction are asked: (1) to take an oath of allegiance to the federal and state constitutions and the laws of California as against all [fol. 396] *enemies of the United States of America, the State of California, and the County of Los Angeles; and (2) as such officers and employees to answer upon their oath or affirmation, (a) whether or not they advocate the overthrow of the government by force or violence and whether or not since December 7, 1941, they have been members of any organizations or political parties that advocate the overthrow of the government by force or violence, as well as to sign an affidavit not to advocate the overthrow of the government by force and violence or to become a member of an organization or political party which so advocates so long as the person is a county officer or employee; (b) to state any aliases they have ever used or been known by; and (c) to indicate whether they have ever been a member of or directly or indirectly supported any of the organizations listed in the affidavit submitted to them?*

This question must be answered in the affirmative. The mere asking of the question points unerringly to the answer any *loyal, sane* citizen of the United States of America would give to it. It is an unequivocal "Yes".

The People of the state of California are supreme and [fol. 397] have the undoubted right to protect themselves and to preserve the form of government which they have

adopted against any and all enemies whether they be domestic or foreign. It is not alone the right of the People to protect themselves and their chosen form of government against attack from all sources, but it is their duty to do so, since they have guaranteed to the people of the United States "a Republican Form of Government" in this state. (Constitution of the United States, Art. IV, sec. 4; Constitution of California, Art. I, sec 3.)

Every citizen is a minority member of society, and the form of government which the people of the several states have adopted guarantees to each minority member, as well as to the majority, a republican form of government in his own state. Such form of government has long since passed through the experimental stage. It has proved to be the most satisfying to the aspirations of mankind, and at the same time the most practical government yet devised. Trial and experience have demonstrated it to be the best form of government that this world has ever known. Our system has maintained democratic processes, improved the condition of the people, preserved liberty, promoted justice, [fol. 398] encouraged the arts and sciences, and served the needs of changing peoples. All this in spite of an occasional administrative failure to adhere to the Constitution of the United States, due to incompetence or criminal design of some individual.

The People acting through their duly authorized representatives have assumed the foregoing obligation and have plenary power to perform it under any and all conditions.

The extreme limit to which the People may exercise this power is found in their undisputed right to require a citizen to give his time, be maimed, or even sacrifice his life in defense of his country.

In Arver v. United States, 245 U. S. 366 (62 Law Ed. 349, 358), at page 390 Mr. Chief Justice White, speaking for the Supreme Court of the United States says: "Finally, as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war declared by the great representative body of the people can be said to be the imposition of involuntary servitude, in violation of the prohibitions of the 13th Amendment, we [fol. 399] are constrained to the conclusion that the contention to that effect is refuted by its mere statement."

Again in United States v. Macintosh, 283 U. S. 605, 624 et seq. (75 L. Ed. 1302, 1310), Justice Sutherland, in discussing the question of an individual citizen's allegiance to the government of the United States, succinctly states the situation as follows:

"In Jacobson v. Massachusetts, 197 U. S. 11, 29, 49 L. ed. 643, 651, 25 S. Ct. 358, 3 Ann. Cas. 765, this court, speaking of the liberties guaranteed to the individual by the 14th Amendment, said:

"'. . . and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense.' • • •

"When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation* of the will of God the decisive test which shall conclude the government and stay its hand. [fol. 400] We are a Christian people (Church of the Holy Trinity v. United States, 143 U. S. 457, 470, 36 L. ed. 227, 231, 232, 12 S. Ct. 511), according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a nation with the duty to survive; a nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God."

Clearly, since the government of the United States has the right to force an individual citizen (a minority member of society) to surrender his life in defense of his country, any state in attempting to perpetuate its loyalty to the union has the unquestioned right and duty to exact from its citizens adherence to all lesser measures which have for their purposes the preservation of our form of government and the repression of its enemies. Therefore, when a person enters the employ of this state or any subdivision thereof, he impliedly surrenders certain natural rights which would re- [fol. 401] main his if he were a private citizen only just the

same as he would surrender certain privileges if he were to enter private employment.

This rule is well stated by Mr. Justice Holmes in McAuliffe v. Mayor, etc., of City of New Bedford, 29 N. E. 517. The great jurist was then sitting on the Supreme Court of Massachusetts. He had before him a petition for mandamus to restore the petitioner to the office of policeman in the City of New Bedford. Petitioner had been removed by the Mayor after a hearing because he had violated a rule which read: "'No member of the department shall be allowed to solicit money or any aid, on any pretense, for any political purpose whatever.' *There was also evidence that he had been a member of a political committee, which likewise was prohibited.*" (Italics ours.) The jurist's unanswerable logic proceeded: "It is argue- by the petitioner that the mayor's finding did not warrant the removal; that the part of the rule violated was invalid, as invading the petitioner's right to express his political opinions; . . . One answer to this argument . . . is that there is nothing in the constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the [fol. 402] office of policeman, and making it part of the good conduct required. The petitioner may have a constiutional right to talk politics, but he has no constitutional right to be a policeman. *There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract.*" (Italics ours.)

An analogous rule is found in the case of Christal v. Police Commission, 33 Cal. App. 2d 564. In this case petitioners who were formerly policemen of the City and County of San Francisco sought by mandamus to be reinstated in their positions. The cause of their removal was predicated upon the fact that they were subpoenaed to appear before the grand jury and refused either to produce their private records or to answer questions concerning their assets and income. The court said at page 567, et seq.:

". . . the main question involved is whether appellants, while holding positions as police officers, could exercise the constitutional privilege of refusing to testify before the grand jury under the circumstances and still insist upon retaining their positions as police officers. . . . We [fol. 403] need not further discuss the nature of said privi-

lege here as it is conceded by all that said officers could exercise that privilege in any proceeding. We are concerned here only with the result of the exercise of such privilege, by those holding the positions of police officers, in an investigation by which it was sought to determine whether such officers had been guilty of criminal activities in connection with their duties as police officers. * * *

"We are not unmindful of the constitutional privilege above mentioned which may be exercised by all persons, including police officers, in any proceeding, civil or criminal. . . . As we view the situation, when pertinent questions were propounded to appellants before the grand jury, the answers to which questions would tend to incriminate them, they were put to a choice which they voluntarily made. Duty required them to answer. Privilege permitted them to refuse to answer. They chose to exercise the privilege, but the exercise of such privilege was wholly inconsistent with their duty as police officers. They claim that they had a constitutional right to refuse to answer under the circumstances, but it is certain that they had no constitutional right to remain police officers in the fact of their clear violation of the duty imposed upon them.

(McAuliffe v. Mayor of New Bedford, 155 Mass. 216 (29 [fol. 404] N. E. 517). We are of the opinion that such a violation of duty would constitute cause for dismissal even in the absence of any specific rule requiring such officers to give testimony before the grand jury, or of any specific rule relating to 'conduct unbecoming an officer.' That such conduct constituted 'conduct unbecoming an officer,' there can be no doubt. * * *

"There is nothing startling in the conception that a public servant's rights to retain his office or employment should depend upon his willingness to forego his constitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment. One of the most cherished rights guaranteed by the Constitution is that of freedom of speech, yet no one would maintain that a police officer could fully exercise that right without violating the duties imposed upon him by the acceptance of his employment as a police officer. The right of freedom of speech might be relied upon by a police officer who had disclosed to persons conducting an illegal establishment, information concerning the plan of the police department

to conduct a raid upon such establishment, but the furnish-[fol. 405] ing of such information would be inconsistent with and violative of the duties of such police officers. Such conduct would constitute cause for dismissal with or without any specific rule on the particular subject, and in the event of the adoption of a rule providing for dismissal of any officer making such disclosure, the claim that such rule violated any constitutional right of the officers would be clearly untenable."

In Hayman v. City of Los Angeles, 17 Cal. App. 2d 674, a motor truck driver sought by mandamus to be reinstated to his position in the City of Los Angeles. He claimed that his discharge was improper on the theory of the violation of his constitutional rights of freedom of speech and freedom of assembly. It appeared that he had caused dissension among employees by circulating a handbill protesting against the rules adopted by the Board of Public Works. The court disposed of petitioner's claim that his constitutional guarantees of freedom of speech and freedom of assembly entitled him to conduct such activities by the following statement at page 678 et seq.:

"He seeks to justify his activities upon the ground of his constitutional right of freedom of speech and assembly. [fol. 406] The right which is involved here is not that which petitioner thinks has been denied him, but is the right of respondents to exercise a reasonable supervision over city employees, to the end that proper discipline may be maintained and that activities among employees be not allowed to disrupt or impair the public service. Such is not only the right but the duty of the city and its several departments. In the exercise of this duty they must be allowed a wide discretion and their acts are not subject to review by the courts until they have reached the point of illegality."

Finally, Chief Justice Gibson, in the case of Communist Party v. Peck, 20 Cal. 2d 536, speaking for the Supreme Court of California, states the rule as follows, page 551:

"There is no doubt, however, that the remainder of section 2540.4 comes within the Legislature's power to prescribe tests and conditions for participation in primary elections. *This power certainly includes the right to adopt tests designed to exclude those political parties advocating the overthrow of the government by unlawful means or those*

[fol. 407] *parties carrying on a program of sabotage, force and violence, sedition or treason.* Such groups constitute an immediate threat to the functioning of our institutions, including the continued exercise of the right of suffrage. Since it is within the power of the state as to such groups to restrict even the rights of free speech and free press (see, for example, Whitney v. California, 274 U. S. 357 (47 S. Ct. 641, 71 L. Ed. 1095); Stromberg v. California, 283 U. S. 359 (51 S. Ct. 532, 75 L. Ed. 1117); DeJonge v. Oregon, 299 U. S. 353, 364 (57 S. Ct. 255, 81 L. Ed. 278), it clearly was within the reasonable bounds of the Legislature's power to determine that these bodies should also be barred from the primary election ballot. Under such circumstances we have no doubt that the Legislature's power to exclude parties and individuals from participation in a primary election extends to those groups whose political beliefs create a clear danger to the continued existence of the institutions under which our constitutional form of government functions. Section 2540.4 of the Elections Code, omitting the invalid portions which are clearly severable, must be upheld as a proper condition for participation in primary elections in this state in the following form [fol. 408] 'Notwithstanding any other provisions of this code, no party shall be recognized or qualified to participate in any primary election . . . which either directly or indirectly carries on, advocates, teaches, justifies, aids or abets the overthrow by any unlawful means of, or which either directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against, the Government of the United States or of this State'." (Italics ours. See also, Danskin v. San Diego Unified School District, 28 Cal. 2d 536, 548; Congress of Industrial Organ. v. City of Dallas, 198 S. W. 2d 143, 146; Bell v. District Court of Holyoke, 51 N. E. 2d 328, 330; United States v. Bryan, 72 Fed. Supp. 58, 63.)

The foregoing cases support the obvious rule that plaintiffs, as public servants, have the implied duty to support the form of government lawfully chosen by the People whom they are employed to represent, and that they impliedly agreed, when they accepted public employment, to act as representatives of the People and not to advocate destruction of the government by force or violence. By accepting public employment they forego any privilege they may have

[fol. 409] had as private citizens to advocate the overthrow of the government by force and violence. It is inconceivable that they should be permitted to represent the People, be supported by the People, and at the same time have the privilege of advocating the overthrow of the very government by which they are employed and obtain their livelihood. If they cannot subscribe to the prescribed affidavit they may join those who serve themselves in the ranks of private employment.

There is nothing in the foregoing rule or affidavit which in the slightest degree affects the plaintiffs' rights of political belief or religious belief. Defendants are simply performing their duty by making proper inquiry of their employees as to their loyalty to their employer, the People of the State of California. There is nothing in the oath or affidavit which requires plaintiffs to surrender any constitutional right. If they desire to advocate the overthrow of the government of the United States, the State of California, or the County of Los Angeles, they may do so by any and all lawful means after first resigning from their public employment. It needs no argument to support the thesis that their employer, the People of the State of California, [fol. 410] need not wait until after an employee has committed some overt act before making inquiry as to his fitness to occupy the position which he holds. Certainly it is clear that a private employer would be perfectly justified in requiring an employee to submit to questioning and examination before leaving his place of employment in order to ascertain whether the employee was stealing property of the employer, and he might obviously question his employee as to whether he intended to take or destroy the employer's property. A servant employed by the People is held to an even higher standard, and his employer, the People, not only may, but it is their duty through their authorized representatives to make proper inquiry as to his fitness for the position which he occupies and as to his intentions and acts relative to his loyalty to the People.

Many fraternal and other organizations require that a neophyte assume an obligation of loyalty to the government of the United States of America prior to his attaining membership in the organization. It has never been questioned, nor could it reasonably be questioned that the organization had a right to exact such an obligation prior to accepting the applicant for membership. None of his constitutional

[fol. 411] rights is invaded by such requirement. For example, no one would think of claiming that a prospective member of the Benevolent and Protective Order of Elks was having his constitutional rights violated because such Order, before admitting a member, requires that he take an obligation to be loyal to the government of the United States of America.

If a private organization can lawfully require a loyalty obligation, without question the People may require such an obligation from a person seeking to remain in a public position with its attendant perquisites and manifold benefits.

The obligation or oath required of defendants is substantially the same as that which a foreign born person is required to take before becoming entitled to the honor, benefits and privileges of being a naturalized citizen of the United States of America.* Since a naturalized citizen has the same rights and duties as a native born, with certain constitutional exceptions, there is not any logical reason why a native born citizen should object to assuming a similar [fol. 412] obligation.

The Honorable Clarence M. Hanson, the trial judge, in sustaining the demurrers without leave to amend, filed an opinion in which we concur. Such opinion with appropriate changes is adopted and made a part of this decision. It reads thus:

"The primary question presented, viewed in its broadest aspect, is whether the Board of Supervisors may require the officers and employees under its jurisdiction (1) to take an oath of allegiance to the federal and state constitutions, and the laws of California as against all enemies of the United States and the State, and (2) require such officers and employees to answer upon their oath certain questions that touch upon the oath [of allegiance].

"The plaintiff in cause No. 534177 is a civil service employee of the County of Los Angeles. She alleges in her amended complaint that she is *not* a member of the Communist Party or of any of the organizations listed on the questionnaire submitted to her. She avers, however, that the requirement thereby sought to be imposed upon her, i.e.,

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* 8 U. S. C. A. (1942) (Title Aliens and Nationality), p. 742, para. 735.

that she take the oath in the form tendered and respond under oath to the questionnaire submitted, violates her [fol. 413] constitutional rights as an American citizen.

"The fifteen plaintiffs in cause No. 534288 allege in their amended complaint that they are civil service employees of the County of Los Angeles. They likewise aver that the requirement sought to be imposed upon them, i. e., that they take the oath in the form tendered and respond under oath to the questionnaire submitted, violates their constitutional rights as American citizens.

"The form of the oath here in question, a part of the questionnaire, reads as follows: (Here is recited the oath above set forth.) * * *

"Without narrating in detail the allegations of the two amended complaints it will suffice to say that they allege, in almost every conceivable way, that the defendant board and its agents are without power to impose the requirements in question; that the manner, method and application of the power, if power there be, is without legal sanction and violative of the statutory and constitutional rights of the plaintiffs and all employees of the defendant county required to submit to the questionnaire and take the oath in question.

"In this State it is well established that the Board of [fol. 414] Supervisors under our Constitution, the state laws and the Charter of the County, exercises the powers of the county, except as it is otherwise specifically limited. The Board is vested with the power to appoint all county officers and employees, not otherwise provided for by the Charter. However, with respect to the classified service, the appointments must be made from the so-called eligible civil service list.

"The Civil Service provisions of the Charter authorize the Civil Service Commission to prescribe, amend and enforce rules for the classified service, to make investigations concerning the enforcement and effect of its rules, and the efficiency of the service. Moreover, the commission is empowered to reject candidates who wish to be placed upon civil service rolls where they fail to measure up to the reasonable requirements of the commission and likewise it is authorized to drop persons who have attained the eligible list, for like reasons.

"In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and,

thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, [fol. 415] despite anything the appointing power can do about it.

"From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is 'subversive', the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.

"What then are the powers of the Board and its agents with respect to laying a *good or bad* foundation for a discharge of an employee? Clearly, the appointing power—whether it be private or public—is entitled, subject to a review by the Commission, to discharge for cause or no cause, and, as a corollary, to investigate as it sees fit as a basis for such cause, save and except as it is restricted by law.

"Section 41 of the Charter provides that 'no person in the classified service . . . shall be appointed, or reduced or removed or in any way favored or discriminated against [fol. 416] because of his political or religious opinions or affiliations.' Aside from this restriction there are no restrictions by the Charter or by law on the appointing power of the board or its agents in appointing or discharging civil service employees, except as noted.

"It seems self-evident, then, that aside from any restraining constitutional provision, the Board of Supervisors itself or through its agents duly authorized may investigate to its heart's content the character, the antecedents, the viewpoints and the affiliations of any of its employees, including those in the civil service, so long as the investigation does not touch upon the political or religious opinions or affiliations of the employee. Moreover, it would seem to follow that so long as the Board does not impinge upon these restrictions, it may, like any private employer, demand of its employee an oath, if it chooses, and a response to a questionnaire as a basis in whole or in part for his discharge. The fact that a person is on the civil service rolls

does not insulate him from the lawful actions of the appointing power or enable him to restrict them, except for the rights specifically granted to him by the provisions of the Charter. Like any private employer the county may ques- [fol. 417] tion its employees *and demand* unquestioned loyalty, *in the manner it lays it down*, except as restricted by law. To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. (United Public Workers v. Mitchell, 1947, 91 L. Ed. 509.)

"There remains then to consider whether the action, or the alleged threatened action, of the Board or its agents, violates the rights of the plaintiffs under the federal or the state constitutions. The plaintiffs contend that their rights in this respect are violated in view of the provisions of the First and Fourteenth Amendments of the federal Constitution and the cognate provisions of our state constitution.

"Shortly stated, the plaintiffs contend that the action of the Board and its agents in requiring the employees to take the oath propounded and to give answer to the questionnaire, under oath, violates an employee's rights guaranteed to him under the federal and the state constitutions. These rights, as set forth by the plaintiffs, are as follows:

[fol. 418] "(1) 'Every citizen may freely speak . . . his sentiments on all subjects, being responsible for the abuse of that right. . . .' (California Constitution, Article I, Section 9.)

"(2) 'The people shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.' (Calif. Const., Art. I, Sec. 10.)

"(3) 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' (14th Amendment, U. S. Const.)

"In viewing the constitutional mantle thrown around an individual it is important to remember that the mantle is a *safeguard*, not *absolute*, but *relative* and *qualified*. Our

federal and state constitutional provisions, which guarantee freedom of speech and of opinion, freedom of the press, freedom of assembly, are not licenses to do completely as one chooses, without regard to the other fellow, who possesses exactly the same liberties. When one purports to pursue the liberties granted by the constitution he needs to [fol. 419] remember that the other fellow has equal liberties and, what is more, he has the liberty to refuse to listen to another's speech or opinion and the right to refuse to yield to him his own right of assembly. Conceivably, a person may be of the opinion that it is entirely proper to drive through a stop light, or on city streets at 80 miles an hour in violation of an ordinance, but even so, setting up constitutional provisions as a defense will prove ill-advised. So, too, one may believe that the 14th Amendment is a defense to acts that sabotage the Government or are subversive to it, but one will quickly find that the constitutional provision against treason is not cut down or modified, in the least, by the First Amendment or any other provision of the federal or state constitutions.

"In what manner, then, do the requirements as laid down by the Board, or as applied by its agents, impinge on the constitutional rights of the plaintiffs or any other officer or employee subject to the general jurisdiction of the Board? Some of the plaintiffs, but not all of them, do say that they have no objection to an oath that would require them to support the constitution, federal and state, but that the oath [fol. 420] in question goes further and, consequently violates their constitutional rights. The oath, it is true, calls upon the employee not only to support the constitution, state and federal, but to abjure enemies of the Government, both domestic and foreign, but even if that be true, as it is, what is wrong with that in these United States? Moreover, where is the constitutional provision which directly or indirectly prohibits the Board from demanding that an employee subscribe to the oath? The answer is, there is none, and therefore no more need be said on that subject.

"We come next to the questionnaire. It requires that the employee, aside from taking the oath submitted, answer under oath (1) whether or not he advocates the overthrow of the Government and whether or not, since December 1, 1941, he has been a member of any political party or organization that advocates the overthrow of the Government by

force or violence; (2) the name or names which he has used or been known by; (3) whether or not he has been a member of or directly or indirectly supported any of the organizations listed on the questionnaire.

"With respect to these particular questions in the questionnaire, the plaintiffs contend they violate their consti- [fol. 421] tutional rights, in that, whether they do or do not personally advocate the overthrow of the Government by force or violence, or belong or do not belong to organizations with such objectives, the provisions of the two constitutions sustain them in their refusal to answer. This is the crux of the argument of the plaintiffs in this aspect of the case. Accordingly, we may now proceed at once to a determination of the issue thus made.

"A year ago the Supreme Court of the United States answered these identical contentions in the case of United Public Workers v. Mitchell, 91 L. Ed. 509. Accordingly we may now well turn to that decision for the light it throws on the very similar problem which is posed in the case before us. In that case, instituted by civil service employees, as is the case here, it was contended that the so-called federal Hatch Act, in prohibiting federal classified civil service employees from taking 'any active part in political management or in political campaigns', violated their constitutional rights in that it prohibited them from doing the very thing which an ordinary citizen could do with impunity. Accordingly, in that case as here, the plaintiffs sought de- [fol. 422] claratory relief and an injunction. In holding that the Act was constitutional, the court pointed out that as early as 1882 the court had held that it was entirely proper for Congress to prohibit party activity by federal employees in the classified service. The court said: 'The conviction that an actively partisan governmental personnel threatens good administration has deepened since Ex Parte Curtis (106 U. S. 371 (1882)) . . . Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection. . . . To declare that the present supposed evils of political activity are beyond the power of Congress to redress would leave the Nation impotent to deal with what many sincere

men believe is a material threat to the democratic system.

" '. . . The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power. . . .

" 'When actions of civil servants in the judgment of Con- [fol. 423] gress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that those restrictions are unconstitutional.' • • •

"In view of the decisions just quoted . . . it seems clear that the acts of the defendant Board and its agents, whether they go to the extent claimed by the plaintiffs or not, are within the scope of the power of the Board and are in no sense unconstitutional. Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. . . ."

An order sustaining a demurrer is not appealable but is reviewable on an appeal from the judgment. (Harmon v. De Turk, 176 Cal. 758, 761. See also cases cited in 2 McKinney New California Digest, 1946, p. 141, Appeal and Error, sec. 39 (b). Hence the purported appeals from the orders [fols. 424-431] sustaining the demurrers are dismissed.

The judgments are and each is affirmed.

McComb, J.

We concur:

Moore, P. J.; Wilson, J.

[fol. 432] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HELEN PARKER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al, Respondents

JULIA LERNER STEINER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al, Respondents

APPELLANTS' JOINT PETITION FOR HEARING IN SUPREME COURT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the State of California:

Helen Parker, *et al.*, and Julia Lerner Steiner, *et al.*, appellants here and plaintiffs below in companion cases considered and disposed of jointly below, respectfully request that this Honorable Court order that the above entitled cases be transferred to the Supreme Court for hearing and decision after decision for the District Court [fol. 433] of Appeal, Second Appellate District, Division 2, affirming the judgement of the trial court in favor of respondents, and request that a hearing in this Court after decision by said District Court of Appeal is necessary upon the following ground:

To secure the settlement of important questions of law of the gravest public consequence.

Summary Statement of the Case *

The issues of law presented to this Court by this petition are of the gravest public import. They concern the most fundamental liberties in our constitutional society, the basic

* The two causes come here on virtually identical records and were disposed of by a single opinion below. The complaint in the Parker case has been set out in Appendix 1 and the opinion of the District Court of Appeal in Appendix 2.

rights of citizens to freedom of thought, speech and association. The issues at all stages below were issues of law, never of fact, for those issues were framed from the outset herein by the trial court's sustaining a demurrer without leave to amend to appellants' complaint.

In their complaint appellants sought injunctive and declaratory relief charging respondents with a conspiracy to impair, obstruct, burden and destroy the fundamental rights and liberties enjoyed by appellants as members of a self-governing democratic society. The demurrer, of course, conceded the facts upon which the complaint was predicated to be true. Notwithstanding this the District Court below, for reasons and on premises at war with fundamental constitutional tenets and contrary to authoritative principles established by the decisions of this Court and the United States Supreme Court, approved the sustaining of [fol. 434] the demurrer and affirmed judgment of dismissal.

In such premises, the petition herein is of import not alone to appellants but to the whole State of California, its people and its courts. The liberties of the people indispensable to their self-government are rights which can be yielded to no demurrer. And constitutional democracy can be subjected to no judgment of dismissal. Appellants speak advisedly when they assert that the decision below portends the forfeiture of nearly every constitutional guarantee lying at the root of self-governing society and a republican form of government.

The case so presented may be briefly summarized:

Appellants are permanent employees in the classified service of the County of Los Angeles; they sue in a representative capacity on behalf of all classified employees of the County. The respondents are public officers of the County of Los Angeles, including the Board of Supervisors, the Chief Administrative Officer, the County Counsel, the Sheriff and the Civil Service Commission of that County.

On or about April 1, 1947, the Board of Supervisors directed the Chief Administrative Officer and the County Counsel to compose a scheme of investigation into the thoughts, speech and association of all County employees [App. 1, p. 5, Par. IV] to determine whether or not there were "any Communists, avowed or otherwise" [App. 1,

p. 21, lines 16-7], or any persons who were "communistic" or "subversive" in the employ of the County [App. 1, p. 5, Par. IV].

Pursuant to these instructions the Chief Administrative Officer and the County Counsel composed and drafted the [fol. 435] scheme and plan set forth in the document attached to the Complaint as Exhibit A [App. 1, p. 6, Par. V].

On August 26, 1947, the Board of Supervisors adopted and approved the scheme as drafted and ordered that it be placed into operation [App. 1, p. 6, Par. VI.] The Board appointed the Chief Administrative Officer, the County Counsel, the Sheriff and the Secretary of the Civil Service Commission as a committee to assist the Board in administering the scheme and plan [App. 1, p. 5, Par. II(j)].

Formulated in respondents' express language the objectives of their scheme and plan, and the standards by which their administrative action is to be determined are as follows:

1. the detection and penalization of "any known subversively inclined persons." [App. 1, p. 24, lines 11-2.]

2. the detection and penalization of "any Communists, avowed or otherwise." [App. 1, p. 21, lines 16-7.]

3. the detection and penalization of advocacy, belief or association which is "subversive" or "Communistic." [App. 1, p. 22, lines 29-30; p. 23, lines 1, 2, 10, 16, 18-9, 23, 29-30.]

4. the detection and penalization of advocacy of or association for the purpose of "overthrowing our government" (without qualification as to method, whether lawful or unlawful, peaceful or by force and violence). [App. 1, p. 23, line 15.]

As will be developed below the very formulation of these objectives and standards declares a purpose to investigate the thought, speech and association of County employees [fol. 436] and to measure them against criteria of orthodoxy so vague and indeterminate in meaning as to place no limits upon respondents' discretion. Respondents have threatened and declared their intent to impose discharge, public stigma of disloyalty and other penalties upon County

employees who fail to satisfy the unbridled and undefined judgment of respondents under the loyalty plan [App. 1, pp. 7-9, Pars. IX and X].

In pursuit of the purpose of measuring the thought, speech and association of all County employees against the above-listed standards of propriety, the Board of Supervisors directed the Administrative Committee above described to ascertain whether any County employees have registered affiliation with the Communist Party with the County Registrar of Voters at any time during the past ten years [App. 1, p. 21, lines 28-32]. The Board further directed the Committee to seek information from the Federal Bureau of Investigation and the County Sheriff [App. 1, p. 22, lines 1-6]. The Board directed the Committee to require every County employee to execute an affidavit under oath, (1) denying or affirming membership in "any political party or organization that advocates the overthrow of the government of the United States or the State of California or the County of Los Angeles by force and violence"; and (2) indicating whether or not said employee had ever "been a member of or directly or indirectly supported or followed" any organization or publication out of a list of some 150 organizations and publications of a political and kindred character [App. 1, p. 22, line 7 *et seq.*].

With respect to that portion of the affidavit relating to the 150 organizations and publications, the complaint alleges that the members of the administrative committee, [fol. 437] pursuant to the program, have threatened to and unless restrained will presume that any County employee who indicates in his affidavit that he has ever belonged to or directly or indirectly supported or followed any of the organizations or publications has thereby (that is by his exercise of his constitutional freedom of speech, thought and association) offended against the standards of orthodoxy established by the Board, and upon that basis the Administrative Committee will call upon such employee to carry the burden of proving his orthodoxy nonetheless [App. 1, p. 23, lines 25-30].

In such event, unless the employee concerned succeeds in overcoming this presumption of guilt by proving that his speech, thought or association has never offended against the standards of propriety above enumerated, the complaint alleges the respondents intend to, have threatened to and unless restrained will (1) publicly stigmatize said employees

as subversive and disloyal [App. 1, pp. 6-7, Par. VIII(a)]; (2) discharge, reduce or otherwise discriminate against such employees [App. 1, p. 7, Par. VIII (c)]; or subject such employees to other penalties therefor [App. 1, pp. 8-9, Par. X(2)].

The above matters relate to past conduct. The complaint alleges that in like manner as to future conduct the respondents intend to, have threatened to and will, (1) inquire into the political beliefs and opinions, the speech, thought and reading matter and the political and community associations of all County employees; (2) require all such employees to disclose under oath all matters pertaining thereto; (3) "define in their arbitrary and uncontrolled discretion, those thoughts, beliefs and opinions. Those political organizations and associations and those newspapers, books and maga- [fol. 438] zines or other publications which shall be orthodox" for all County employees; (4) require that such employees renounce and forego such thought, speech and association as may be deemed unorthodox in the discretion of respondents [App. 1, pp. 7-8, Par. IX]; and (5) penalize County employees failing in the future so to conform their thought, speech and association to the prejudices of the respondents by publicly stigmatizing such employees as subversive and disloyal and by discharging, reducing or otherwise discriminating against such employees [App. 1, pp. 8-9, Par. X(1)].

The full affront of respondents' scheme and plan against the liberties of speech, thought and association cannot be appreciated without noting the shocking breadth of the area of thought and speech covered by the organizations and publications listed in the affidavit as suspect, connection with which is alone enough to shift to the employee, at the minimum, the burden of proving his innocence of *verboten* advocacy. They cover a broad range of activities directed at the exigencies of our recent and current times. A cursory examination of the list reveals the names of four *labor unions:* American Communications Association, Federation of Architects, Engineers, Chemists and Technicians, United Federal Workers, Workers Alliance; five *political organizations:* American Communist Party, Farmer Labor Party, Hollywood Independent Citizens Committee of Arts, Sciences and Professions, Independent Citizens Committee of Arts, Sciences and Professions, National Citizens Politi-

cal Action Committee; two *publications:* Daily Worker, New Masses; five organizations dealing with various aspects of *foreign affairs:* American Committee for a Free Indonesia, League Against War and Fascism, American Russian Institute, Anti-Nazi League, Joint Anti-Fascist Refugee [fol. 439] Committee; six organizations dealing with problems of *civil rights and discrimination:* American Committee for the Protection of the Foreign Born, Bay Area Council Against Discrimination, Civil Rights Congress, International Labor Defense, National Negro Council, National Federation for Constitutional Liberties; six involved with *civic affairs:* Committee for Defense of Mexican-American Youth, Citizens Committee to Free Earl Browder, Hold the Price Line Committee, Harry Bridges Defense Committee, League of Women Shoppers, Citizens Committee for Better Education; and two *schools:* California Labor School, Communist Workers School.

With respect to the organizations and publications listed, the respondents in their own words admit that all are possessed of "publicly alleged purposes which have every appearance of being patriotic and worthy" [App. 1, p. 23, lines 4-5]. Respondents' only justification for the use of this index of proscribed organizations and publications is that they were drawn from the reports of the Joint Fact Finding Committees on Un-American Activities of the California Legislature for the years 1943, 1945 and 1947 [App. 1, p. 22, lines 15-22].

Thus, upon information gathered from "subversive files" of the F. B. I. and the Sheriff's office and from the compulsory disclosure of belief and association prescribed in the affidavit, as well as the "opportunity" to disprove subversiveness presumptively indicated in the affidavit, the classified employee is subjected to a political litmus test. There hangs in the balance his job, his chances of future employment and his reputation.

[fol. 440] Questions Presented.

1. May the County discharge or threaten to discharge County employees for thought, speech or association deemed impermissible under standards of propriety and impropriety as vague, indeterminate, ill-defined and amenable to wholly arbitrary discretion as are the four standards

for measuring the thought, speech and association enumerated in the foregoing summary without:

(a) violating the rights of said employees to freedom of speech, thought and association and intimidating, coercing and obstructing them in the discharge of their duties as citizens in a self-governing constitutional democracy to exercise those rights fully and according to their conscience, or

(b) intruding upon and into the area of governmental powers and functions reserved to the people in a self-governing constitutional democracy;

all as contrary to applicable specific provisions of the Federal and State constitutions and to the fundamental charter of governmental process conceived and established by those constitutions in whole.

2. May the County subject County employees to public stigmatization as "subversive" and "disloyal" persons, or threaten the same for thought, speech and association deemed impermissible under the standards described in Question 1 without violating the constitutional provisions and principles set forth in Question 1.

3. May the County require County employees to divulge under oath affiliation or non-affiliation with, or direct or [fol. 441] indirect support or non-support of, the 150 organizations, institutions and publications listed by the County in the instant case without:

(a) offending against the constitutional provisions and principles set forth in Question 1 for the reason that freedom of *thought* is under our compact of government *absolute* and under no circumstances may any governmental body compel citizens to divulge matters of thought and mind, including political opinions and beliefs; or,

(b) offending against the constitutional provisions and principles set forth in Question 1 for the reason that freedom of *association* is indispensable to popular self-government and to effective exercise by the people of the right to freedom of speech, and that, consistent with the preservation of the right to free-

dom of association, no governmental body may under any circumstance compel any citizen to divulge his affiliation or non-affiliation with or support or non-support of any association or organization of a political or kindred character; or,

(c) depriving County employees of their personal constitutional right to privacy and silence and immunity from inquisition or compulsory disclosure with respect to matters of their innermost conscience affecting their personal political thoughts, speech or associations in contravention of the provisions of the Fourth, Fifth and Fourteenth Amendments to the Federal Constitution and their counterparts in the State Constitution; or,

(d) offending against the constitutional provisions and principles set forth in Question 1 for the reasons [fol. 442] assigned under (a) and (b) of this question, and the constitutional provisions set forth under (c) of this question for the reasons there stated, in view of the further consideration that in the instant case the governmental body concerned expressly concedes the organizations, institutions and publications here concerned to be of such a character that from affiliation or non-affiliation therewith or support or non-support thereof no rational inference may be drawn bearing any evidentiary relationship to any speech, thought or conduct on the part of any effected employee of a character which might lawfully be condemned or penalized.

4. Considerations of freedom of speech, thought and association aside, may the County in a proceeding looking toward and aimed at discharge [for the violation by any County employee of standards authorizing discharge], require by compulsory test oath that an employee furnish evidence against himself from out of his own mouth without offending against the provisions of the Federal and State Constitutions securing to all persons immunity against compulsory self-incrimination.

5. Considerations of freedom of speech, thought and association aside, may the County require County employees to divulge under oath affiliation or non-affiliation

with or direct or indirect support or non-support of the 150 listed organizations, institutions and publications upon the basis that said organizations, institutions and publications were derived from the reports and findings of the Joint Fact Finding Committee on Un-American Activities of the California Legislature, and upon answer revealing affiliation or support of any such listed organization, in- [fol. 443] stitution or publication impose upon the affected employee the penalties of discharge or public stigmatization or upon such answer predicate a presumption of guilt precedent to the imposition of such penalties and place upon the affected employee the burden of overcoming such presumption where the imposition of like penalties or presumptions are applied only in connection with the organizations, institutions and publications named and are not applied equally to all other organizations, institutions and publications, without:

(a) offending against the provisions of the Federal and State Constitutions prohibiting bills of attainder; or

(b) offending against Article I, Soctions 21 and 11 of the California Constitution prohibiting special legislation, and

(c) offending against the provisions of the Federal and State Constitutions prohibiting the intrusion by the legislative branch of government into the area and functions reserved to the judicial branch of government.

6. Considerations of freedom of speech, thought and association aside, may the County impose upon County employees penalties by way of discharge and public stigmatization for *past* speech, thought, association or conduct upon the part of the employee without offending against the provisions of the Federal and State Constitutions prohibiting *ex post facto* legislation.

[fols. 444-445] ARGUMENT

I

The County Abridged the Rights of Appellant Employees to Freedom of Speech, Thought and Association in Con-

travention of the First and Fourteenth Amendment to the United States Constitution and Article I, Sections 9 and 10 of the California Constitution and Intruded Into the Area of Government Reserved to the People by Those Constitutions in Whole, *First*, by Threatening Discharge and Public Stigmatization Under Standards and Proscriptions Which Are Vague, Ill-Confined and Amenable to Wholly Arbitrary Discretion and Which Include the Lawful With the Unlawful, if Any, and, *Second*, by Requiring From Appellants Compulsory Disclosure of Affiliation With or Support of the Publications and Organizations Listed in the Affidavit.

[fols. 446-451] ARGUMENT

A. The County Violated the Rights and Principles Here Concerned by Threatening Discharge and Public Stigmatization Under Standards and Proscriptions Which Are Vague, Ill-Confined and Amenable to Wholly Arbitrary Discretion and Which Include the Lawful With the Unlawful, if Any.

[fols. 452-458] B. The County Violated the Rights and Principles Here Concerned by Requiring From Appellant Employees Compulsory Disclosure of Affiliation With or Support of the Publications and Organizations Listed in the Affidavit.

[fols. 459-465] C. The Premise of the District Court of Appeal That Advocacy of Force and Violence May Be Penalized Is an Insufficient Premise to Justify or Excuse the Abridgments of Speech, Thought and Association Here for the Proscriptions Here Were Not So Confined; Even Were the Proscriptions Here So Confined the Abridgments Could Not Be Justified or Excused for That Proscription Is Itself an Unconstitutional Standard.

[fols. 466-476] II

The Compulsory Disclosures of Political Speech, Thought and Association Prescribed by the County Here Violates Appellants' Privacy of Conscience and Immunity From Inquisition in Such Matters in Contravention of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 13 of the Constitution of California.

[fols. 477-491] III

The Abridgement Herein of the Rights of County Employees to Freedom of Speech, Thought and Association and to Privacy of Conscience Respecting Political Beliefs and Affiliations Cannot Be Justified on the Grounds of Express or Implied Obligations in the Contract of Hire; in Fact the Contract of Hire Expressly Guarantees the Full and Free Exercise of the Rights Which the County Has Sought to Abridge.

[fols. 492-495] IV

The Violations of Freedom of Speech, Thought and Association Here May Not Be Defended as Acts and Measures Essential or Appropriate to the Preservation of Our Representative Form of Government.

[fols. 496-500] V

Considerations of Freedom of Speech Aside, the Requirement Here of Compulsory Disclosure Respecting Affiliation With or Support of the Listed Organizations and Publications Violates the Constitutional Provisions Prohibiting Compulsory Self-Incrimination in That the Requirement Here Compels County Employees to Give Testimony Against Themselves in a Proceeding Which Has as Its Object the Visiting of Punishment Upon Them.

[fol. 501] VI

The County's Program Offends Against the Constitutions Provisions Prohibiting Ex Post Facto Legislation.

[fols. 502-595] VII

The County's Use Here of Legislative Committee's Findings as the Basis for Imposing Penalties on Members or Supporters of Named Organizations or for Imposing Presumptions of Guilt or Shifting the Burden of Proof With Respect to Such Members or Supporters Violates the Constitutional Provisions Which Prohibit Bills of Attainder and Special Legislation and Which Forbid the Legislature From Intruding Into the Function of the Judiciary.

[fol. 596] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

2nd Civil No. 16588

HELEN PARKER, et al., Plaintiffs and Appellants,

vs.

COUNTY OF LOS ANGELES, et al., Defendants and Respondents

STIPULATION RE RECORD ON APPEAL AND PRAECIPE—Filed March 23, 1949

The plaintiffs and appellants in the above entitled action contemplating a petition for Writ of Certiorari in the Supreme Court of the United States,

It is stipulated between the attorneys for the parties, that the entire record be certified by the Clerk of this Court to the Supreme Court of the United States save and except the following:

1. Stipulation and Petition for Retention in the Supreme Court;
2. Affidavit of John T. McTernan;
3. Application for Permission to File Brief of Amici Curiae in Support of Petition for Hearing, and Brief;

And the Clerk of this Court is requested to prepare and certify said record.

Dated: March 23, 1949.

[fol. 597] Gallagher, Margolis, McTernan & Tyre, William B. Murrish, Kenny & Cohn, Charles J. Katz, by William B. Murrish, Attorneys for Plaintiffs and Appellants. Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants and Respondents.

[fol. 598] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 599] [Stamp:] Filed Jan. 10, 1949, William I. Sullivan, Clerk, by ——, L. A. Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

STEINER, et al.,

v.

DARBY, et al.,

PARKER, et al.,

v.

COUNTY OF LOS ANGELES, et al.,

ORDER DENYING HEARING

After Judgment by District Court of Appeal

2nd District, Division 2, Civil Nos. 16587, 16588

Order Due Jan. 11, 1949

Appellants' petition for hearing Denied.
Carter, J., voting for a hearing.

Dated Jan. 10, 1949.

Gibson, Chief Justice.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 23rd day of March, A. D. 1949.

William I. Sullivan, by W. G. Sinsford, Deputy Clerk.
(Seal.)

[fol. 600] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1948

No. —

HELEN PARKER, et al., Petitioners,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

STIPULATION RE PRINTING OF THE RECORD

In accordance with the provisions of Rule 38(8) of this Court, it is hereby stipulated between the attorneys for the parties in the above entitled action, that the entire record certified to this Court by the Clerk of the District Court of Appeal, State of California, Second Appellate District, be printed *except* the following:

1. Pages 65 and 66;
2. Page 68 through page 391;
3. Page 425 through page 431;
4. Page 444 beginning with the words "Summary of Argument," through the words "Clear and present danger," in the middle of Page 446.
5. Page 446 beginning with the words "In any area of law" through the words "of any sort" at the top of page [fol. 601] 452;
6. Page 452, beginning with the words "The method of procedure" through Page 458;
7. Page 459, beginning with the words "Much of the discussion" through Page 465;
8. Page 466, beginning with the words "The affidavit prescribed in the loyalty order" through Page 476;
9. Page 477, beginning with the words "Summary of Argument" through page 491;
10. Page 492, beginning with the words "The District Court of Appeal's opinion" through Page 495;
11. Page 496, beginning with the words "It has been urged" through Page 500;
12. Page 501, beginning with the words "Not only does" through the words "*affirming* 95 F. 2d 976," on Page 502;

13. Page 502, beginning with the words "As set forth" through Page 562;

14. Page 563, through Page 595.

Dated: This 30th day of March, 1949.

Gallagher, Margolis, McTernan & Tyre, William B. Murrish, Kenny & Cohn, Charles J. Katz, by William B. Murrish, Attorneys for Petitioners. Har- [fol. 602] old W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Respondents.

[fol. 603] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 13, 1949

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, Second Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.